IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 1667 of 2007(W)

AGAINST THE ORDER IN EP 85/2000 IN
OS.82/1998 of SUB COURT, HOSDRUG

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PETITIONER:

M.J. CYRIAC, S/O.LATE OUSEPH,
MAVELLIL, MAVELLIL HOUSE, MALAKKALLU,
KALLAR VILLAGE, P.O. MALAKKALLU.

BY ADV. SRI.P.NARAYANAN

RESPONDENTS:

STATE BANK OF INDIA,
KANHANGAD BRANCH, REP. BY ITS MANAGER,
KANHANGAD, KASARGOD DIST.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 1667 OF 2007

Dated 23rd January 2007

J U D G M E N T

Petitioner is judgment debtor in O.S.82/98 on the file of Sub court, Hosdurg. Respondent is the decree holder. For realisation of decree debt mortgaged property was sought to be sold. As per order in E.A.209/2003 dated 9/1/2004, an extent of 25 cents, where residential building of petitioner is situated, was excluded. As per order in E.A.200/05 dated 20/9/2006 executing court permitted decree holder to sell 57 cents of item No.1 of the mortgaged property excluding 4 feet width way. Under Ext.P4 decree holder sought amendment of the sale paper which was allowed by the executing court. As per order in Ext.P4 decree holder produced draft sale papers for 57 cents of property to be sold. When judgment debtor contended that property cannot be identified, as identification of the property is not correct, Ext.P3 application was filed to amend draft sale papers. It was allowed by executing court as per order dated

4/12/2006. Property was thereafter directed to be sold. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioner was heard. Argument of learned counsel appearing for petitioner is that if property as shown in the amended sale paper is sold, it will not be the property which is allowed to be sold as per order of the court, as the property is not properly described.

3. On going through amended sale paper and hearing learned counsel appearing for petitioner, I do not find any reason for such apprehension. Draft sale paper makes it absolutely clear that property sought to be sold is the remaining property excluding 25 cents which was excluded as per order in E.A.209/03. Argument of learned counsel appearing for petitioner is that boundaries are not properly shown in Ext.P2. Eastern property shown is 25 cents in the possession of petitioner, which has been excluded. So also northern property is shown as residential house with 25 cents in the possession of judgment debtor Ext.P2 also establish that 4 feet path way which has been directed to be excluded was not included in the property to be sold. In such circumstances, I do not find any reason to

interfere with the direction to sell the property, in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.